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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,449	02/10/2004	Elof Eriksson	310558.00002	9419

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QUARLES & BRADY LLP  
411 E. WISCONSIN AVENUE  
SUITE 2040  
MILWAUKEE, WI 53202-4497

EXAMINER
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TYSON, MELANIE RUANO

ART UNIT	PAPER NUMBER
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3773

MAIL DATE	DELIVERY MODE
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01/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/775,449

Applicant(s)

ERIKSSON ET AL.

Examiner

Melanie Tyson

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 10-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/9/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This action is in response to Applicant's election received on 16 November 2007.

#### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, Species I, in the reply filed on 16 November 2007 is acknowledged. The traversal is on the ground(s) that the apparatus as claimed cannot be used to practice another and materially different process, and the species identified are not mutually exclusive. This is not found persuasive because the apparatus as claimed is simply a cutting blade coupled to a ramp in a housing having a cutting edge extending through a slot in the housing, which may be used for shaving if one desires to do so. Applicant argues that the device is specifically designed to penetrate the skin and could not be used for shaving. However, as claimed one could use the apparatus to shave by trimming hairs without compressing the apparatus against the skin. Furthermore, in addition to shaving, the apparatus may be used to trim other body hair or remove unwanted tissue from a patient, such as burned and damaged tissue, to promote healing. Therefore, there are numerous other processes the apparatus may practice other than for tissue harvesting and for cutting the harvested dermal tissue. With respect to the species requirement, species I is non-adjustable, species II requires a depth adjustment mechanism comprising depth-setting screws, and species III requires mounting brackets. Therefore, the related inventions do not overlap in scope, i.e., are mutually exclusive.

The requirement is still deemed proper and is therefore made **FINAL**.

2. Claim 13 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention. Contrary to Applicant's remark, claims 6-9 require a depth adjustment mechanism which reads on nonelected species II, therefore, claims 6-9 are also withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "wherein the forward base portion is offset higher than the rearward base portion." Figures 4 and 5 show that although the forward base portion does not extend the depth the rearward base portion extends, the top surfaces are aligned and, thus the forward base portion is not "offset higher" than the rearward base portion. For examination purposes, the limitation "offset higher" has been broadly interpreted as having at least one surface on the forward base portion that is not aligned with same surface of the rearward base portion.

Claim 11 recites the limitation "wherein the handle extends in a direction generally parallel to the cutting edge of the blade." Since the applicant discloses the cutting blade is angled with respect to the base housing and handle, the direction of the handle as claimed is unclear.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson et al. (2,839,109). Wilson discloses an apparatus (see entire document) comprising a housing having a base (12) and at least one side (14), the base having spaced apart forward and rearward portions defining a slot (20) therebetween, wherein the forward base portion is offset higher than the rearward base portion (at portion 18); a handle (may comprise any or all of body 10), a support ramp (36) defining an angle between 1 and 45 degrees relative to the base, a cutting blade (54) coupled to the support ramp that is attached to the housing, the cutting blade defining a cutting edge (56) extending through the slot to a depth lower than the forward base portion, and a retaining plate (60) coupled to the upper blade surface. The introductory statement of intended use has been carefully considered, but deemed not to impose any structural limitations on the claims to make them patentably distinguishable over Wilson's device, which is capable of being used as claimed if one desires to do so.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson et al. Wilson fails to disclose the housing is molded around the blade. However, the applicant discloses in paragraphs 25 and 26 of the specification that a retaining plate may be used to secure the blade to the housing, or alternatively, the housing may be molded around the blade during fabrication to secure the blade to the housing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to mold the housing around the blade, since constructing a structure of various elements into an integral structure involves only routine skill in the art.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Friday 9-5:30 (max flex).


Application/Control Number:  
10/775,449  
Art Unit: 3773

Page 6

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson *MT*  
January 11, 2008

  
(JACKIE) TAN-UYEN HO  
SUPERVISORY PATENT EXAMINER